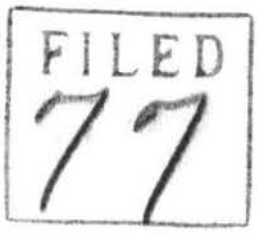
TRUST COMPANIES: Trust company subject to Chapter 363, RSMo 1949 needs only majority vote of all its stock membership to amend articles of incorporation to effect increase in rate of cash dividend on its preferred stock.



December 3, 1953

Honorable J. A. Rouveyrol
Commissioner, Division of Finance
Jefferson Building
Jefferson City, Missouri

Dear Mr. Rouveyrol:

The following opinion is rendered in reply to your request involving the power of a trust company, operating under the provisions of Chapter 363, RSMo 1949, to increase the dividend rate on preferred shares of stock. Without quoting the full text of your inquiry, the question to be answered is briefly stated as follows:

> In the event a trust company subject to the provisions of Chapter 363, RSMo 1949, desires to amend its articles of incorporation so as to increase the rate of cash dividend on its preferred stock, what percentage of stock ownership must consent to such charter amendment?

Section 363.470, RSMo 1949, discloses what percentage of the net earnings of a trust company are to go to the surplus fund and how the profit and loss account is to benefit from such net earnings. With particular reference to such profit and loss account the statute provides, in part, as follows:

> "3. The credit balance of such account shall constitute the undivided profit at the close of such dividend period, and shall be available for dividends. The directors of any such trust company may from time to time declare such dividends as they shall judge expedient from such undivided profits."

Since we are considering a cash dividend on stock, as distinguished from a dividend payable in stock, we are not concerned with the power of a trust company, found at Section 362.085, RSMo 1949, to issue preferred shares upon the vote of "all of its stockholders" as required by Section 362.075, RSMo 1949. We treat the present inquiry solely as one relating to the authorization of an increased rate of dividend on preferred stock previously issued in a lawful manner.

If the articles of incorporation of the trust company were so drawn, at the time it first exercised its statutory right to issue preferred shares, as to make the rate of cash dividend returnable on such preferred shares a fixed percent, it necessarily follows that any change to be made in such return would involve an amendment to articles of incorporation. However, we consider that such an amendment would be one not inconsistent with Chapter 363, RSMo 1949, and that the vote required to carry the amendment would be governed by Section 363.510, RSMo 1949, which provides as follows:

> "An affirmative vote of the persons holding the larger amount in value of all the shares of stock shall be necessary to increase or diminish the amount of its capital stock, or to extend or change its business, as aforesaid, or to enable a trust company to avail itself of the provisions of this chapter."

CONCLUSION

It is the opinion of this office that a trust company subject to the provisions of Chapter 363, RSMo 1949, in amending its articles of incorporation so as to increase the rate of cash dividend on its preferred stock, may do so by a majority vote of all of its stock membership.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Julian L. O'Malley.

Very truly yours,

JOHN M. DALTON
Attorney General

JLO'M:vlw